

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION**

MDL No. 2419

Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Cases Against Saint Thomas Outpatient Neurosurgical Center

**PLAINTIFFS' STEERING COMMITTEE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING PRODUCT LIABILITY CLAIMS AGAINST SAINT
THOMAS OUTPATIENT NEUROSURGICAL CENTER**

The Plaintiffs’ Steering Committee respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of partial summary judgment establishing that: (1) the Defendant Saint Thomas Outpatient Neurosurgical Center (“Saint Thomas Neurosurgical”) was a “seller” as that term is defined in the Tennessee Products Liability Act of 1978, Tenn. Code Ann. § 29-28-102(7); and (2) Saint Thomas Neurosurgical is jointly and severally liable for all harm caused by the defective product sold (methylprednisolone acetate) under Tennessee law.

The controlling precedent articulated by the Tennessee Supreme Court in *Owens v. Truckstops of America*, 915 S.W.2d 420 (1996) establishes that joint and several liability applies to manufacturers, sellers and distributors of defective products, as well as all parties within the “chain of distribution,” when plaintiffs assert claims for strict product liability. In such cases, fault at trial must be assigned to the product as a single unit or share. Fault cannot be assigned separately to parties involved with making, testing, marketing, distributing or selling the product.

As grounds for this motion, the Plaintiffs' Steering Committee states that there are no genuine issues of material fact as to the issues raised in the present motion, and plaintiffs are

entitled to partial summary judgment as a matter of law. As additional grounds and support for the present motion, the Plaintiffs' Steering Committee relies upon the contemporaneously filed memorandum of facts and law (with exhibits and citations to the record), which is incorporated herein by reference.

Respectfully submitted,

/s/ George Nolan

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, George Nolan, hereby certify that on October 6, 2015, I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

/s/ **George Nolan**

George Nolan